



Alan C. Lloyd, Ph.D.
Agency Secretary

State Water Resources Control Board

Division of Water Rights

1001 I Street, 14th Floor ♦ Sacramento, California 95814
P.O. Box 2000 ♦ Sacramento, California 95812-2000
916.341.5300 ♦ FAX: 916.341.5400 ♦ www.waterrights.ca.gov



Arnold Schwarzenegger
Governor

**NOTICE OF PETITION FOR TEMPORARY CHANGE
INVOLVING THE TRANSFER OF UP TO 125,000 ACRE-FEET OF WATER
FROM THE YUBA COUNTY WATER AGENCY
TO THE DEPARTMENT OF WATER RESOURCES
UNDER PERMIT 15026 (APPLICATION 5632)**

Notice is hereby given that on November 18, 2005

Yuba County Water Agency
c/o Curt Aikens
1402 D Street
Marysville, CA 95901

filed with the State Water Resources Control Board (State Water Board), a Petition for Temporary Change under Water Code section 1725, et seq. Yuba County Water Agency's (YCWA) petition requests a temporary change to facilitate the transfer of up to 125,000 acre-feet (af) of water under Permit 15026 (Application 5632) to the Department of Water Resources (DWR) for use by the Environmental Water Account (EWA) and possible use for DWR's 2006 Dry-Year Water Purchase Program. Temporary changes approved pursuant to Water Code section 1725 may be effective for up to one year. The YCWA petition states that the period of the proposed transfer is from April 1, 2006 through February 28, 2007.

DESCRIPTION OF THE TRANSFER

YCWA proposes to transfer up to 125,000 af of water under Permit 15026 (Application 5632) to DWR. To facilitate the transfer, YCWA proposes to release up to 125,000 af of water currently stored in the New Bullards Bar Reservoir between April 1, 2006 and February 28, 2007. Water would be released from New Bullards Bar Reservoir into Englebright Reservoir (via the Colgate Power House) to the Yuba River (through Daguerre Point Dam) thence the Feather River thence the Sacramento River to the Delta. Water reaching the Delta would be available for use by DWR to provide salinity and water quality controls within the Delta or to export from the Delta at either the Clifton Court Forebay or the Tracy Pumping Plant for use within the State Water Project (SWP) or Central Valley Project (CVP) service areas.

YCWA presently operates to meet the interim instream flow requirements contained in State Water Board Revised Decision 1644 (RD-1644). The maximum release rate from Englebright Reservoir for this transfer under most hydrologic conditions is approximately 750 cubic feet per second (cfs) above the interim flow requirements contained in RD-1644, however during dry years the maximum additional release rate may increase to approximately 1,000 cfs above the interim flow requirements.

California Environmental Protection Agency

YUBA ACCORD

On April 21, 2005, YCWA, in cooperation with 16 other local, State, federal and environmental organizations, approved agreements for a proposed settlement of instream flow requirements on the Lower Yuba River. The proposed Lower Yuba River Accord (Yuba Accord) includes three separate but related proposed agreements: (1) a Fisheries Agreement, (2) a Water Purchase Agreement, and (3) a Conjunctive Use Agreement. Together, the three agreements form a framework that is intended to resolve conflicts over instream flow requirements for the lower Yuba River. The Yuba Accord covers years from 2006 through 2016.

The Yuba Accord proposes to provide modified instream flows for fish, a portion of which would be transferred to DWR and the U.S. Bureau of Reclamation. The subject petition is intended to implement a Pilot Transfer Program during the 2006 water year based on the instream flow requirements in the Fisheries Agreement and the transfer accounting rules in the Water Purchase Agreement. Information regarding the Yuba Accord is available on YCWA's website at www.ycwa.com/accord%201.html.

CONCURRENT PETITION FOR CHANGE

RD-1644 contains a set of interim flow requirements (measured at the USGS Marysville Gage and Smartville Gage) that are in effect through April 20, 2006, and a set of long-term requirements which are scheduled to go into effect after April 21, 2006. YCWA has stated that it cannot implement the Pilot Transfer Program proposed in the Yuba Accord under the long-term flow requirements contained in RD-1644. Accordingly, YCWA has filed a separate petition under Water Code section 1700, et seq., to change the effective date of the long-term flow requirements to March 1, 2007. If YCWA's petition to postpone the effective date of the long-term flow requirements is approved, then the interim flow requirements that are presently in effect would remain in effect until March 1, 2007. That petition is being separately noticed. Additionally, due to the time constraints, the State Water Board has scheduled an evidentiary hearing to review the proposed change in the instream flow requirements contained in RD-1644. The combined public notice for that petition and hearing proceeding is available for viewing on the Division of Water Rights' (Division) website at www.waterrights.ca.gov/Hearings/CurrentProjects.htm.

AVAILABILITY OF WATER FOR TRANSFER

YCWA's petition indicates that up to 85,000 af of the 125,000 af proposed to be transferred may consist of surface water made available through an increase in groundwater pumping to serve demands in Yuba County that would otherwise be served with surface water (groundwater substitution). The YCWA contractors participating in the proposed groundwater substitution

plan are Brophy Water District, Browns Valley Irrigation District, Cordua Irrigation District, Dry Creek Mutual Water Company, Hallwood Irrigation Company, Ramirez Water District, and South Yuba Water District.

The remaining portion of the water proposed to be transferred consists of water previously stored in New Bullards Bar Reservoir. YCWA's petition includes an agreement with DWR that is intended to ensure that future refill of water transferred from storage (i.e., the transfer total minus the total excess groundwater pumped) in New Bullards Bar Reservoir does not adversely impact the SWP or CVP. The agreement establishes a method of accounting for refill of New Bullards Bar Reservoir due to the proposed transfer. Under the accounting procedures in the agreement, any refill of New Bullards Bar Reservoir that occurs during balanced conditions in the Sacramento-San Joaquin Delta would be subject to repayment to the CVP and SWP during a subsequent period of balanced conditions.¹

PROPOSED TEMPORARY CHANGE

The proposed temporary change would temporarily add the Clifton Court Forebay and Tracy Pumping Plant as points of rediversion under Permit 15026. The service areas of the SWP (as shown on maps 1878-1, 2, 3 & 4 on file with Application 5629) and CVP (as shown on map 214-208-12581 on file with Application 5626) would be temporarily added to the place of use of Permit 15026. Municipal use, salinity control and water quality control would be temporarily added as additional purposes of use under Permit 15026.

PETITIONER'S WATER RIGHTS

Permit 15026 authorizes the storage of 490,000 af of water per year from the North Yuba River between October 1 and June 30. Permit 15026 also authorizes the direct diversion of up to 1593 cfs from the North Yuba and Yuba Rivers between April 1 and July 1. The authorized points of diversion/rediversion under Permit 15026 are located at New Bullards Bar Dam and Daguerre Dam. The authorized purposes of use under Permit 15026 are irrigation, industrial, recreation, fish mitigation and enhancement, and domestic purposes within the place of use shown on map EJ-05-08-R3 (on file with the SWRCB under Application 5632). Permit 15026 was amended by RD-1644 and includes the instream flow requirements specified therein. A copy of RD-1644 is available for viewing on the Division's website at www.waterrights.ca.gov/hearings/decisions/RevisedWRD1644.pdf.

¹ "Balanced conditions" in Sacramento-San Joaquin Delta refers to periods of time when water is being released from storage at SWP or CVP reservoirs in order to comply with Delta water quality standards.

ENVIRONMENTAL CONSIDERATIONS

Temporary changes in water right permits and licenses to enable a temporary transfer of water pursuant to Water Code section 1725 et seq. are exempt from the requirements of the California Environmental Quality Act (CEQA). However, in acting upon petitions for temporary changes involving a temporary transfer of water, the State Water Board must consider potential impacts to other legal users of the water and to fish, wildlife, or other instream beneficial uses. YCWA has submitted a study titled “*Environmental Analysis for the Proposed Yuba County Water Agency One-Year Water Transfer to the California Department of Water Resources and 2006 Pilot Program Lower Yuba River Accord Fisheries Agreement*” in support of its petition. This document is posted on the Division’s website at www.waterrights.ca.gov/application/TempUrg.htm.

SWRCB'S STATUTORY PROVISIONS

Pursuant to Water Code sections 1725, et seq., the State Water Board is authorized to issue temporary change orders, allowing the transfer or exchange of water or water rights after completing an evaluation and finding that the proposed temporary change:

1. Involves only water that would otherwise have been either consumptively used or stored by permittee or licensee or was conserved pursuant to Water Code section 1011;
2. Would not injure any legal user of the water;
3. Would not unreasonably affect fish, wildlife, or other instream beneficial uses; and
4. Any increase in groundwater pumping associated with this transfer (i.e., groundwater substitution) is performed in compliance with Water Code sections 1745.10 and 1745.11.

If the State Water Board cannot satisfy, in a timely manner, the provisions of Water Code section 1725, et. seq., then the State Water Board may deny the petition or schedule and notice a hearing regarding the proposed temporary change.

OPPORTUNITY FOR COMMENTS

Pursuant to the requirements outlined above, the State Water Board is seeking information to assist in the evaluation of the proposed temporary change and temporary transfer of water as proposed in YCWA’s petition. Any person may file comments concerning the proposed temporary change and these comments must address the required findings set forth above. The petitioner has the burden of establishing that the proposed temporary change will not injure any

legal user of water, or unreasonably affect fish, wildlife, or instream beneficial uses. If the State Water Board determines that the petitioner has established a prima facie case, the burden of proof then shifts to the party that has filed comments (Water Code section 1727). While such a determination has not been made in this case, commentors should provide sufficient information to support claims of injury or affects on fish, wildlife, or other instream beneficial uses.

Due to the relative brevity of the temporary transfer process, the Division may (if necessary) request that the petitioner submit additional information during the comment period. Any such requests and any additional information submitted by the petitioner regarding this proposed temporary change **during the comment period** will be posted with this notice on the Division's website at www.waterrights.ca.gov/application/TempUrg.htm. Potential commentors are strongly urged to check the website for such information prior to filing a comment.

Comments filed in response to this notice must be received in the office of the State Water Board's Division of Water Rights, by **3:00 p.m. on December 28, 2005**. Additionally, **the response must be accompanied by proof of service of a separate copy of the materials on the petitioner**. The petitioner's and the Division's street and mailing addresses are listed below. Interested parties are encouraged to file comments by FAX and to notify the following contact persons by telephone of any materials that will be submitted. However, an original copy of all materials must be received for the SWRCB to consider your concerns.

Mailing Address

Division of Water Rights
c/o Greg Wilson
P.O. Box 2000
Sacramento, CA 95812-2000
FAX: (916) 341-5400

Yuba County Water Agency
c/o Paul Bartkiewicz
1011 22nd Street
Sacramento, CA 95816-4907
FAX: (916) 446-4018

Street Address

1001 I Street, 14th Floor
Sacramento, CA 95814

Please direct questions about this notice to Greg Wilson at (916) 341-5427. Questions regarding the petitioner or transferee should be addressed to Paul Bartkiewicz at (916) 446-4254.

Original signed by

James W. Kassel
Assistant Division Chief

Dated: November 23, 2005